IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17254 of 2007
Date of decision: 19.12.2007

Shiv Shakti Educational Society (Regd.)

-----Petitioner

Vs.

State of Punjab and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Charanjit Sharma, Advocate for the petitioner.

Mr. Salil Sagar, Addl.A.G.Punjab for the State.

Mr. Anupam Gupta, Advocate for the University.

Mr. Munish Jolly, Advocate for Indian Nursing Council.

Mr. SP Jain, Sr. Advocate with Mr. Dheeraj Jain, Advocate)
Mr. DS Nalwa, Advocate)
Mr. SS Narula, Advocate)
Mr. KS Dadwal, Advocate)
Mr. B.S.Bhalla, Advocate) (for the added respondents)

JUDGEMENT

1. This petition seeks a direction for grant of permission to the petitioner for admission to 40 students to B.Sc Nursing Course 2007 in the College of Nursing of the petitioner-Society. Further direction sought is for quashing corrigendum dated 7.11.2007,

Annexure P.11, granting permission to admit students to certain institutions, on the basis of grant of 'consent of affiliation' by Baba Farid University, subject to the condition that registration of the said institutions will be done after permission from the Indian Nursing Council (INC).

2. Case of the petitioner is that it was registered as Society in the year 2002 and started imparting Nursing education for a Diploma course in G.N.M Nursing. It applied for issuance of 'No Objection Certificate' (NOC) for establishing/opening a Medical Education Institution for B.Sc Nursing Course on 24.12.2003. The said certificate was issued on 8.3.2006, Annexure P.1, subject to the condition that admissions will be made only after approval from respondent No.2 - INC and Baba Farid University - respondent No.4. The petitioner applied for grant of recognition to respondent No.3 – Punjab Nurses Registration Council (PNRC) which was granted on 21.9.2006. On 30.8.2006, inspection was carried out by respondent No.2 -INC and necessary approval was granted vide Annexure P.3. Respondent No.2 (INC) also issued Suitability/Recognition Certificate vide Annexure P.4 for intake of 40 seats. Respondent No.4 University after carrying out inspection vide letter dated 8.11.2006, Annexure P.5, informed the petitioner that there were certain deficiencies with regard to faculty, building maintenance, attached Hospital, Laboratories, hostel, teaching

rooms and library. The petitioner-Society applied for second inspection, which was conducted on 23.7.2007. The Committee which conducted the inspection, again submitted adverse report dated 7.8.2007, Annexure P.6. The petitioner applied for third inspection and again deficiencies have been pointed out vide letter dated 8.11.2007, Annexure P.9. The deficiencies do not exist in fact. The inspection reports are biased and for extraneous considerations. As against this, vide corrigendum dated 7.11.2007, seven institutes have been allowed to make admissions, though they had not been subjected to any inspection and no affiliation has been granted in their favour. Merely 'consent for affiliation' has been given, without any inspection. No approval has been given by the INC.

3. In the reply filed on behalf of respondent Nos. 1 and 3, (the State and the State Council), the stand taken is that approval of INC was not necessary for establishing the institute but was necessary only for registering the students for practice outside the State, which was clarified in para 5 of the affidavit of the INC itself dated 20.4.2007 filed in another writ petition, being CWP No.16436 of 2006, (**Kular Medical Education and Research Society v. State of Punjab and others**), a copy of which was Annexure R1/1, to the effect that establishment of a Nursing Institution required approval of the State Government and the State

Nursing Council and affiliation from a recognised Hospital. Role of Indian Nursing Council was to regulate Nursing profession and to set uniform standards and unless a Nursing Institution was approved by INC, persons obtaining degrees/diplomas were not entitled to register or practice 'outside the State'. As regards the corrigendum dated 7.11.2007, permission was granted to the institutes mentioned therein as per guidelines dated 6.5.1998, Annexure R1/3, which the petitioner did not fulfil and on account of that distinction, the petitioner was not allowed permission for admissions by the Punjab Nurses Registration Council for the Session 2007-08. The institutions mentioned in the corrigendum were already conducting Three Year Diploma Course after getting affiliation from the University and after taking the permission from the INC and possessed the necessary land, building and other infrastructure and difference in infrastructure required for B.Sc degree being very little, the said institutions had been allowed to make admissions. Respondent No.3 Punjab Nurses Registration Council conducted inspection of the infrastructure of the petitioner on 16th and 17th September 2006 and found certain shortcomings. Earlier, affiliation granted on 21.9.2006 was for the academic session 2006-07 for one year only but subsequently, deficiencies were found with regard to the faculty. Permission given to the petitioner by INC was also for the academic session 2006-07.

4. In the reply filed by respondent No.2 INC, it has been stated that the petitioner was granted permission and deficiencies found in the petitioner-Institution were not serious so as to make the petitioner unsuitable for B.Sc Nursing Course. As regards institutions mentioned in Annexure P.11, one institution Mata Sahib Kaur College of Nursing had been permitted, while Shiv Shakti College of Nursing, Sunam Road, Bhikhi, Bengal Institute of Health Sciences, Raikot and Rattan Professional Education Society, Sohana, Mohali were found not suitable. Mai Bhago College of Nursing, Tarn Taran and Baba Farid Educational and Medical Research Society, Faridkot had not applied for recognition. Kullar Medical Education and Research Society, Village Bija, District Ludhiana had applied for suitability for academic year 2008-09. The INC intended to take up the matter with respondent No.1 - State for permitting admission of students. Any institution making admissions had to conform to the standards prescribed by INC.

5. Stand of the University respondent No.4 is that in three inspections, the College of the petitioner was found to be deficient. The INC has laid down eligibility criteria norms for the Nursing Teaching Faculty vide circular dated 3.1.2007/12.3.2007, Annexure R4/1 collectively. The INC has also laid down norms for physical infrastructure and facilities under section 16 of the Indian

Nursing Council Act, 1947 (in short, 'the INC Act'), vide Anenxure R4/2, which envisages approval of an institution from the State Nursing Council and Examination Board/University, apart from inspection of the INC for giving permission for starting the programme. With regard to institutions mentioned in Annexure P.11, the University had received a intimation from the INC that admission for 2007-08 could not be allowed in the said institutions.

6. On 17.11.2007, following order was passed:-

> "Inspite of opportunity given, reply has not been filed so far. Counselling is said to have been concluded today.
>
> Since there are allegations that certain institutes have been included who do not have approval from the Indian Nursing Council and if students are admitted thereto, complications may arise, we direct that no further steps be taken in pursuance of counselling already concluded in respect of institutes mentioned in Annexure P.11, till the next date.
>
> Adjourned to 26.11.2007."

CM No.19466 of 2007 and CM No.19680 of 2007 were filed by Shiv Shakti Medical Society, Sunam Road, Bhikhi and Dr. Shyam Lal Thapar Education Institute respectively, which were dealt with vide order dated 12.12.2007 by this Court. The said institutions were excluded from the purview of interim order dated 17.11.2007.

Applications were also filed by Mata Sahib Kaur College of Nursing, Mai Bhago College of Nursing, Kullar College of Nursing and Baba Farid Educational and Medical Research Society for impleading as party on the ground that they were affected by the interim order dated 17.11.2007. The said applications were allowed and the applicants were ordered to be added as respondent Nos. 5 to 8.

7. We have heard learned counsel for the parties and perused the record.

8. The Indian Nursing Council has been constituted under the provisions of the Indian Nursing Council Act, 1947 ('the Central Act'), while the Punjab Nurses Registration Council has been constituted under the provisions of the Punjab Nurses Registration Act, 1932 ('the State Act').

9. Learned counsel for the petitioner submitted that it having been granted approval by the INC, refusal of the University to grant affiliation on the basis of deficiencies pointed out, was arbitrary. It was also submitted that permission given to other institutes covered by Annexure P.11 without affiliation by the University or without any inspection by the University merely on the basis of consent for affiliation was not valid, particularly when no approval had been taken from the INC and the INC had raised an objection to admissions being allowed. Learned counsel for the

petitioner also relied upon judgment of this Court in **Dr. Shyam Lal Thapar Nursing Foundation v. Baba Farid Unviersity of Health Sciences and others**, 2006(3) SLR 38, to submit that once approval had been given by the INC, affiliation by the University was not required.

10. Learned counsel for the University submitted that there being deficiencies in the infrastructure of the petitioner-institution, the University was justified in not giving affiliation and permission to make admissions could not be given. Approval by the INC did not compel the University to give affiliation. He also submitted that permission for making admissions given to institutions covered by Annexure P.11 was illegal in absence of approval of the INC or affiliation by the University. It was submitted that State Nursing Council could deal only with the issues of registration or grant of diplomas and not the grant of degree for which the University was the exclusive authority. The INC itself had laid down that affiliation by the University was necessary. It was submitted that the INC having been established under the Central Act, the field being occupied by the Central legislation, the State Act could not prevail but the University being governed by the UGC Act, had autonomy in the matter of affiliation, which was independent of recognition or right to establish an educational institution. Reference was made to the judgments of the Hon'ble

Supreme Court in **State of T.N. v. Adhiyaman Educational & Research Institute,** (1995) 4 SCC 104, **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N.**, (1996) 3 SCC 15 , paras 3, 16, 17, 27 to 36, **Unni Krishnan, J.P. v. State of A.P**., (1993) 1 SCC 645, para 204 and **P. A. Inamdar v. State of Maharashtra**, AIR 2005 SC 3226, Paras 120, **Ahmedabad St. Xavier College Society v. State of Gujarat,** AIR 1974 SC 1389,Paras 13 to 18, 94 and 177, **State of T.N. v. S.V. Bratheep**, (2004) 4 SCC 513, paras 9 to 13, **Bharathidasan unviersity and another v. All India Council for Technical Education and others**, AIR 2001 SC 2861, **Jaya Gokul Educational Trust v. Commr. & Secy. to Govt. Higher Education Deptt.**, (2000) 5 SCC 231 and **Andhra Pradesh Christians Medical Educational Society v. Govt. of Andhra Pradesh**, AIR 1986 SC 1490. It was submitted that the University had its own autonomy in the matter of affiliation and could have its own inspection as per INC norms and was not bound by the inspection conducted by the INC. It was submitted that there was conflict of judgments of the Hon'ble Supreme Court in **Thirumuruga**, **Adhiyaman**, **Jaya Gokul** on the one hand and **Bharathidasan** and **S.V.Bratheep** on the other, on the issue of autonomy of the University, vis-a-vis jurisdiction of a Central regulatory authority and the judgments of the Hon'ble

Supreme Court in **Bharathidasan** and **S.V.Bratheep** (supra) still hold the field. Learned counsel submitted that as per the scheme of the Central Act, read with regulations framed, No Objection/Essentiality Certificate was required from the State Government. Inspection was to be carried out by the INC for giving permission to start the programme. Thereafter, approval of the University was required and only then, admissions could be made. All the three requirements were independent and mandatory. The right of the University to grant or decline affiliation was not dependent on the decision of INC, as parameters to be applied by the University were not controlled by the Central Act and even higher standards could be laid down. There was system of checks and balances and grant of clearance by the INC did not bind the University. The University came into picture after the INC had cleared an institution. If affiliation was declined by the University arbitrarily, only remedy of affected party was to challenge the same in Court.

11. Learned counsel for the State submitted that INC approval was not required nor affiliation was required once the University had given 'consent for affiliation' and permission given to institutions mentioned in Annexure P.11 was justified, while denial of permission to the petitioner was also justified as the petitioner stood on different footing. The State Government had

also taken into account the need for giving employment and the University having given consent for affiliation, institutions mentioned in Anenxure P.11 could be given permission for making admissions, pending approval of the INC, which could be taken later. It was also submitted that under the scheme of the INC Act, regulation of statutory authorities, whose qualification was recognised, was only envisaged and not of the individual educational institutions and thus, prior approval of the INC was not required for admission. It was also submitted that approval of the INC had a bearing only for practising outside the State and registration for practice within the State did not require any approval of the INC.

12. Learned counsel for the Punjab Nurses Council relied upon a judgment of learned Single Judge of this Court in CWP No.837 of 1991 (**Mata Amrit Kaur Welfare Trust (Regd.) v. The State of Punjab and others**) decided on 23.5.1991, to submit that only Punjab Nurses Registration Council had the power to recognise an institution and not the INC.

13. Learned counsel for the added respondent Nos. 5 to 8 supported the stand of learned counsel for the State and learned counsel for the State Council.

14. The pleadings and the stand taken by the learned counsel for the INC, the University, the State, the State Council

and the added respondents are clearly at variance, which can be summarised as under:-

(a) According to the stand of the INC and the learned counsel for the petitioner, approval of the INC was a must and no admissions could be made without that. However, the University ought to follow the approval of the INC.

(b) According to the University, INC approval was a must but the University need not fall in line and could still decline affiliation.

(c) According to the learned counsel for the State, the State Council and the added respondents, prior approval of the INC was not required and 'consent for affiliation' given by the University was enough, subject to 'No Objection' by the State and approval by the State Council.

15. Thus, following questions arise for consideration:-

(i)Whether approval of the INC was required for making admissions?

(ii)Whether the University could decline affiliation after approval has been granted by the INC?

(iii)Whether the State Government or the State Nursing Council could allow admissions to be made for B.Sc Nursing Course in absence of there being approval by the INC or affiliation by

the University?

(iv) Whether the petitioner was entitled to make admissions when the University had not granted affiliation and the State Nursing Council had declined to extend recognition?

(v) Whether added respondent Nos. 5 to 8 could have been allowed to make admissions?

16. Before proceeding to deal with the above questions, relevant constitutional and statutory provisions may be noticed.

The INC has been constituted to establish "a uniform standard of training for nurses, midwives and health visitors". Section 3 of the Act provides for constitution of the INC. The INC is a body corporate comprising of elected representatives of various bodies. Section 10 provides for recognition of qualifications which have been included in Part I and Part II of the Schedule. Section 11 provides for the effect of recognition, which is to enable enrolment in any State register. Section 12 provides for power to require information as to courses of study and training and examination from any authority in any State granting such qualification. Section 13 provides for inspections of institutions recognised as training institutions for granting any qualification. Section 14 provides for withdrawal of recognition, inter-alia, if conditions for admission or standard of proficiency of the

candidates was not in conformity with regulations made under the Act. Section 15 provides for amendment of Schedule. Section 15-A provides for Indian Nurses Register, which will include names of all persons who are enrolled on any State Register. Section 16 confers power to make regulations and Clause (g) provides for prescribing the standard curricula for the training courses and Clause (h) provides for conditions for admission to the courses of training. Clause (i) provides for standards of examination and other requirements to be satisfied to secure qualifications recognised under the Act. The relevant extract is as under:-

> "16. **Power to make regulations** – (1) The Council may make regulations not inconsistent with this Act generally to carry out the provisions of this Act, and in particular and without prejudice to the generality of the foregoing powers, such regulations may provide for-
>
> (a) to (f) xx xx xx xx
>
> (g) prescribing the standard curricula for the training of nurses, midwives and health visitors, for training courses for teachers of nurses, midwives and health visitors, and for training in nursing administration;
>
> (h) prescribing the conditions for admission to courses of training as aforesaid;
>
> (i) prescribing the standards of examination and other requirements to be satisfied to secure for qualifications recognised under this Act;

(j) xx xx xxxx xx"

Annexure R4/1 (Colly) are documents laying down eligibility criteria for Nursing Teaching Faculty, Syllabus and regulations, loan for buildings, laboratories, staffing pattern. Annexure R4/2 are the regulations framed under Section 16 of the Act, forwarded vide letter dated 22.8.2006, laying down syllabus and requirements of infrastructure. It provides that any institution wishing to open a college of nursing was required to obtain NOC/Essentiality Certificate from the State Government, inspection by the INC to assess suitability of infrastructure and faculty and grant of permission for starting the Nursing programme. It also requires obtaining of approval from the State Nursing Council and Examination Board/University. It further provides that an institution will admit students only after approval from the State Nursing Council and the Examination Board/University. Detailed provisions for land or hostel, teaching faculty etc. have been made. The relevant extract from Regulation is as under:-

> "**Revised Guidelines for School of Nursing and College of Nursing.**
>
> Any organization under the Central Government, State Government, Local Body or a Private or Public Trust, Mission, Voluntary registered under Society Registration Act or a Company registered under company's Act wishes to open a School/College of

Nursing, should obtain the No Objection/Essentiality Certificate from the State government.

The Indian Nursing Council on receipt of the proposal from the Institution to start nursing program (School/College), will undertake the first inspection to assess suitability with regard to physical infrastructure, clinical facility and teaching faculty in order to give permission to start the programme.

After the receipt of the permission to start the nursing programme from Indian Nursing Council, the institution shall obtain the approval from the State Nursing Council and examination Board/University.

Institution will admit the students only after taking approval of state Nursing Council and examination Board/University.

The Indian Nursing Council will conduct inspection every year till the first batch completes the programme. Permission will be given year by year till the first batch completes."

17. The State Act was enacted to provide for registration and holding of examination of nurses etc. It provides for constitution of Punjab Nurses Registration Council comprising of Director of Health Services and other members. Section 14

provides for registration of Nurses etc. Section 17 provides for prohibiting unregistered persons from practising. Section 18 provides for bye-laws, inter-alia, for laying down course of training, providing for recognition of institutions competent to give training, to regulate the issue of certificates and other matters.

18. Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution of India, are as under:-

> "66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institution."

> "25. Education, including technical education medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

19. We may also briefly refer to the judgments of the Hon'ble Supreme Court dealing with the issue of inter-relationship between a Central Authority constituted under a Central Act vis-a-vis role of the State Government and the role of the University, dealing with technical and higher education.

In **Adhiyaman** (supra), the Hon'ble Supreme Court considered the question whether after coming into force of All India Council for Technical Education Act, 1987, the State Government had the power to grant or withdraw permission to start

a technical institution. Therein, the State Government had permitted private management to start Engineering Colleges and the University granted temporary affiliation. Thereafter, permission and affiliation were sought to be withdrawn. It was held by the High Court that under the Central Act, the exclusive power to recognise any technical institution was with the All India Council for Technical Education. If the State Government or the University were allowed to recognise a technical institution, it could follow different yardsticks. Upholding the said decision, the Hon'ble Supreme Court held that the Central council had the jurisdiction to lay down the norms and to co-ordinate the standards of education. The discussion was summed up in para 41 as under:-

> **"41.** What emerges from the above discussion is as follows:
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> (*i*) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the

absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(*ii*) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(*iii*) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(*iv*) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(*v*) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

> (*vi*) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

In **Thirumuruga** (supra), the Hon'ble Supreme Court considered the issue of repugnancy in Tamil Nadu Medical University Act and Indian Medical Council Act and it was held that in view of Central statute, no scope was left for operation of the State legislation and the State legislation was void for repugnancy and even receiving of assent of the President was also of no avail when the Central Act was later. Relevant observations are:-

> "31. It would thus appear that in Sec. 10-A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State legislation in the said field which is fully covered

by the law made by Parliament. Applying the test laid down by this Court, it must be held that the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college are repugnant to Section 10-A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10-A, viz, establishment of a new medical college and would not extend to establishment of other colleges.

32. The fact that the State Act has received the assent of the President would be of no avail because the repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act. In view of the proviso to sub-Article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power Parliament could repeal the State Act either expressly or by implication. (See : Zaverbhai Amaidas v. State of Bombay, (1955) 1 SCR 799, 809: (AIR 1954 SC 752); Deep Chand v. State of U.P. : (1959) Supp (2) SCR 8) at p.51) : (AIR 1959 SC 648 at pp. 668-69). Although the Central Act does not expressly amend or repeal the State Act but the effect of the non obstante clause in sub-Section (1) of Section 10-A which gives overriding effect to the provisions of Section 10-A

over anything contained in the Indian Medical Council Act, 1956 or any other law for the time being in force, is to render inapplicable, and thereby repeal impliedly, the proviso inserted in sub-section (5) of Section 5 of the Medical University Act in the matter of establishment of a new medical college in the State of Tamil Nadu and its affiliation by the Medical University. In other words, as a result of insertion of Section 10-A in the Indian Medical Council Act, 1956 by the Central Act, with effect from August 27, 1992, the proviso to Section 5(5) of the Medical University Act has ceased to apply in the matter of establishment of a medical college in the State of Tamil Nadu and its affiliation to the Medical University and for the purpose of establishing a medical college permission of the Central Government has to be obtained in accordance with the provisions of Section 10-A. If such a permission is granted by the Central government a further permission of the State Government under the proviso to Section 5(5) of the Medical University Act would not be required for the purpose of obtaining affiliation of such a college to the Medical University.

33. After the enactment of Section 10-A by the Central Government the Medical Council by notification dated September 20, 1993, has made the 'Establishment of new Medical Colleges, opening of higher courses of study and increase of admission capacity in Medical Colleges

Regulations, 1993 (hereinafter referred to as 'the Regulations') whereby a scheme for application for permission of the Central Government to establish a new medical college has been made. In the said scheme qualifying criteria for applying for permission to establish a new medical college have been laid down. One of the conditions that is required to be fulfilled by the eligible organisations is "that Essentiality Certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration". Shri Sanghi has urged that even if the proviso to Section 5(5) of the Medical University Act is held to be inapplicable in the matter of establishing a new medical college and the requirement of obtaining the prior permission of the State Government for establishment of a medical college cannot be insisted upon under the said proviso, a similar requirement has now been imposed by virtue of the qualifying criteria laid down in the scheme as framed by the Regulations and that this was also insisted upon by the Central Government in its Letter of Intent dated December 12, 1995. The submission of Shri Sanghi is that the State of Tamil Nadu has considered matter in the light of this requirement and has refused the necessary

permission.

34. It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the State Government. The said condition about obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University Act. For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone."

In **Jaya Gokul** (supra), the question was whether permission of state Government was required for setting up an Engineering College. Following the earlier judgment in

Adhiyaman (supra), it was held that such a permission was not required. Relevant observations are:-

> "**23.** Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University Statute 9(7) merely required that the *"views"* of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. Point 1 is decided accordingly.
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> **27.** The so-called "policy" of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupananda & Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust* v. *State of T.N. ,(1996) 3 SCC 15,* which was a case relating to medical education and which also related to the effect of a Central law upon a law made by the State under Entry 25 List III, it was held (at SCC p. 35, para 34) that the "essentiality certificate" cannot be withheld by the State Government on any *policy* consideration *because the policy in the matter of establishment of a new medical college now rests with the Central Government alone*. (emphasis supplied) Therefore, the State could not have any " *policy"* outside the AICTE Act and indeed if it had a policy, it should

> have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8 (4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action."

In **State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others,** (2006) 9 SCC 1, the issue was considered in the context of the NCTE Act, 1993. The question was whether State Government or the University could object to a teaching education course being run after grant of recognition by the NCTE. The High Court held that the State Government had no role to play after recognition is granted and that grant of affiliation had to follow as a matter of course. Relevant observations in paras 63 and 80 are as under:-

> **"63.** In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of

National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is *fully* and *completely* occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament *alone* could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

80. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra Universities Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by the 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university ("examining body") is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to

such cases."

In **Bharathidasan University** (supra), it was held that running/conducting of courses and programmes in technology courses by a University did not require prior approval of All India Council for Technical Education. The University having been duly recognised by the University Grants Commission Act, 1956, the All India Council for Technical Education Act, 1987 did not apply for requiring prior approval of All India Council for University course. The UGC Act has been passed by the Parliament, which was also covered by Entry 66 of List I. Relevant observations are:-

> "12. It is by now well-settled that Parliament has enacted the University Grants Commission Act, 1956 as well as the AICTE Act, 1987 in the purported exercise of the powers envisaged in Entry 66 of List-I of the VIIth Schedule to the Constitution of India, when reads as "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." It was permissible for the Parliament to enact a law with the object and aim of co-ordination and determination of standards among a particular class or category of institutions, which may deal with different kinds of education and research as also scientific and technical institutions of different disciplines and specialised branches of even such disciplines. The Parliament, while

enacting the AICTE Act, was fully alive to the existence, in full force and effect the provisions of the UGC Act, 1956, which specifically dealt with the co-ordination and determination of standards at university level of institutions as well as institutions for higher studies of the category or class other than but deemed to be universities and yet roped into the definition of "technical institution" only institutions not being a University as defined in S. 2(i). Apart from so defining technical institutions so as to be exclusive of University even in empowering the AICTE to do certain things, special care seems to have been conspicuously and deliberately taken to make specific mention of universities, wherever and whenever alone the AICTE was expected to interact with Universities and University Departments as well as its constituent institutions. In the statement of objects to the AICTE Act, the evil sought to be curbed was stated to be the coming up indiscriminately of number of private engineering colleges and polytechnics in complete disregard of the guidelines resulting in diluted standards, unplanned growth, inadequate facilities and lack of infrastructural facilities in them and not of any anomalies arising out of any university bodies of UGC to even think of either sidelining or subjugating them by constituting AICTE. The guarded language employed for the said purpose and deliberate omission to refer to the universities in S. 10(1)(k) of the AICTE Act while

empowering AICTE to accord approval for starting new technical institutions and introduction of new programmes or courses by or in such institutions cannot be ignored to be of any insignificance. A careful analysis of the various provisions contained in Ss. 10, 11 and 22 will further go to show that the role of interaction conferred upon AICTE vis-a-vis Universities is limited to the purpose of ensuring the proper maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such universities or scope for any direct action except bringing it to the notice of the UGC or other authorities only, of any lapses in carrying out any directions of the AICTE in this regard, for appropriate action. While stating that autonomy of universities should not mean a permission for authoritarian functioning, the High Courts by the construction placed by them have virtually allowed such authoritarianism to the AICTE to such an extent as to belittle the importance and elegant role assigned to the universities in the Educational system of the country and rendered virtually subordinate to the AICTE. In our view, that does not seem to be the object of creating AICTE or passing of the AICTE Act. Such construction as has been placed by the Court in M. Sambasiva Rao's case (1997 (1) Andh LT 629) (supra) which found favour of acceptance of the Court in the present case ought to have been

avoided and the same could neither be said to have been intended or was ever in the contemplation of the Parliament nor should the UGC and the universities been relegated to a role subordinate to the AICTE. The UGC and universities have always had and have an accepted and well-merited role of Primacy to play in shaping as well as stepping up a co-ordinated development and improvement in the standards of education and research in the sphere of education. When it is only institutions other than universities which are to seek affiliation, it was not correct to state in the decisions under challenge that an University, which cannot grant affiliation to a technical institution, cannot grant the same to itself. Consequently, the conclusions rendered based on the principles for classifying enactments into 'general law' and 'special law' to keep them within their respective limits or area of operation are not warranted and wholly uncalled for and do not merit our approval or acceptance.

13. The AICTE cannot, in our view, make any regulation in exercise of its powers under Section 23 of the Act, notwithstanding sub-section (1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be "not inconsistent with the provisions of the Act and the rules. . . ." So far as the question of granting approval, leave alone prior or post,

> Section 10(1)(k) specifically confines the limits of such power of AICTE only to be exercised vis-a-vis technical institutions, as defined in the Act and not generally. When the language is specific, unambiguous and positive, the same cannot be overlooked to give an expansive meaning under the pretext of a purposive construction to perpetuate an ideological object and aim, which also, having regard to the Statement of Objects and Reasons for the AICTE Act, are not warranted or justified. Therefore, the regulations insofar as it compels the universities to seek for and obtain prior approval and not to start any law department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable."

In **S.V.Bratheep** (supra), the question was whether higher eligibility marks could be laid down by the State Education department when eligibility criteria had been laid down in regulations under the AICTE Act, 1987. It was held that no repugnancy would arise merely by laying down higher eligibility criteria. Reliance was placed on observations in the Constitution Bench judgment in **Dr. Preeti Srivastava vs. State of MP,** AIR 1999 SC 2894.

We may also refer to the legal position enunciated in the Hon'ble Supreme Court judgments to deal with conflicting stands of different statutory authorities.

In ***Oil and Natural Gas Commission*** v.***Collector of Central Excise*** 1992 Supp. (2) SCC 432 (ONGC-I), ***Oil and Natural Gas Commission*** v. ***Collector of Central Excise*** 1995 Supp. (4) SCC 541 (ONGC-II), ***Oil and Natural Gas Commission*** v. ***Collector of Central Excise*** 2004(6) SCC 437 (ONGC-III) and ***C.C.E.*** **v.** ***Jeesop and Co. Ltd.*** (1999) 9 SCC 181, ***Canara Bank v. National Thermal Power Corporation*** (2001) 1 Scc 43, ***Chief Conservator of Forest v. Collector*** AIR 2003 SC 1805, ***M.T.N.L.*** v. ***Chairman, Central Board, Direct Taxes*** AIR 2004 SC 2434, ***Punjab and Sind Bank*** v. ***Allahabad Bank*** (2006) 4 SCC 780, the Hon'ble Supreme Court has laid down procedure for resolving disputes between different government departments. Directions have been issued to set up a committee to examine such disputes. This has been done to ensure that no litigation comes to the court without parties having opportunity of conciliation before a in-house committee.

In **P.A.Inamdar** (supra), the Hon'ble Supreme Court considered the desirability of a single window system for regulating admissions to avoid hardship to students who have to purchase admission forms from several institutions and to appear

in several admission tests on different dates(Para 133). It was also observed that having regard to larger interest and welfare of the students and to promote merit, achieve excellence and curb mal-practices, the admissions ought to be regularised by providing a centralised and single window procedure (Para 135). To curb commercialisation, profiteering and exploitation of students, policing was permissible to regulate the autonomy of professional institutions. Regulatory measures could form part of condition of recognition and affiliation by the University and/or by MCI or AICTE for maintaining standards of excellence in professional education. Such measures did not violate educational rights of minorities or non-minorities (para 140). The two committees for monitoring admission procedure and determining fee structure as per directions in the earlier judgment in **Islamic Academy of Education v. state of Karnataka,** AIR 2003 SC 3724, were held to be permissible regulatory measures (Para 141). It was further observed that regulation of admission procedure was required at the initial stage and that purpose could not be achieved by post-audit or checks after the admissions had been made (Para 142).

20. In the light of above legal position, we proceed to consider the questions formulated in para 15.

Re:(i)

21. We have already referred to the provisions of the INC

Act. The Preamble of the Act shows that the object of the Act was to establish a uniform standard of training. It provided for recognition of qualifications by institutes mentioned in the Schedule and also for making regulations for prescribing conditions for admission to courses of training. Such regulations have been statutorily framed and Regulations (Annexure R4/2) provide obtaining of No Objection/Essentiality Certificate from the State Government, assessing suitability of an institution by the Indian Nursing Council before the programme commences, grant of permission by the INC for starting the programme, approval of the State Nursing Council and the University. It further provides for admission of students only after approval by the State Nursing Council and the University.

It is obvious that no course can be commenced nor admissions can be granted without permission of the INC, approval of the State Nursing Council and the University and No Objection from the State Government.

In view of above, without permission of the INC, the course could not commence and admission could not be given. The INC has also taken the same stand and opposed the permission granted to added respondent Nos. 5 to 8. The petitioner having also not been given approval by the University and the Nursing Council, could not be allowed to make admissions.

The stand of the State Council and the State Government that admissions could be made pending approval by the INC, cannot be upheld. Once admissions are given, it may be inequitable to cancel the same. Approval of the INC could not be taken for granted. As per statutory regulations, approval of the INC was required before admissions were made. Grant of permission to added respondent Nos. 5 to 8 to make admissions cannot be held to be valid. To this extent, the stand taken by the petitioner, the INC and the University has to be upheld and stand of the State, the State Council and the added respondents has to be rejected. The judgment by a Single Bench of this Court in **Mata Amrit Kaur Welare Trust** (supra) cannot be held to be a good law, in view of statutory regulations and the judgments of the Hon'ble Supreme Court in **Adhiyaman**, **Thirumuruga** and **Sant Dnyaneshwar** (supra).

Question (i) is answered accordingly.

Re:(ii)

22. Stand of the petitioner and the INC is that the University was bound to grant affiliation after approval has been granted by the INC, while stand of the University is that grant of approval by the INC does not obviate the need for affiliation by it, which was an independent concept. It was submitted that the scheme of the NCTE Act considered by the Hon'ble Supreme

Court in **Sant Dnyaneshwar** (supra) was different because of language of Section 14(6) of the NCTE Act, 1993. The parameters to be applied by the University could not only be as per the guidelines of the INC but also higher parameters. Inspection conducted by the INC was merely for the purpose of assessing suitability with regard to physical infrastructure, clinical facilities and teaching faculty and if approval of the University was formal, it would have been specifically so stated in the regulations. The University being governed by a Central Act, was not under the control of the INC.

Both the stands - of the petitioner and the INC that affiliation by the University was mere formality and stand of the University that it could not be controlled by the INC, cannot be upheld. The INC Act was a special statute for nursing education. On the analogy of **Sant Dnyaneshwar** (supra), it can be held that field of nursing education was fully occupied by the Act of the Parliament. However, regulations do not say that the affiliation must follow the approval by the INC. In absence thereof, the University could make its own assessment and was not bound by the assessment of the INC. At the same time, the INC, to support its stand that affiliation by the University was a formality, must either frame a regulation to that effect or evolve a mechanism to deal with objections of the University in its inspection. There will

be nothing wrong with a single window system being worked out by the INC, with INC working as a nodal agency and laying down mechanism to deal with any genuine objection of the University in a time bound manner. In fact, doing so is an obligation of the INC and failure to do so may create chaos by requiring educational institutions to remain without any proper forum against an unreasonable stand of a University in a given case.

We do not approve the stand of the University that INC cannot regulate the exercise of power by the University even by making a regulation or laying down a mechanism. We have already referred to the judgments of the Hon'ble Supreme Court laying down desirability of reconciling conflicting stands of statutory authorities. We have also referred to the desirability of single window system at par with the spirit of single window system for admissions, laid down in **P.A.Inamdar**. Mere permissibility of a higher standard being laid down by a University, as observed by the Hon'ble Supreme Court in **S.V.Bratheep** (supra) and observations in **Bharathidasan** (supra), not requiring permission from All India Institution for Technical Education does not exclude regulation by the Indian Nursing Council by laying down appropriate mechanism. The law laid down in a Single Bench judgment of this Court in **Dr. Shyam lal Thapar Nursing Foundation** (supra) will stand modified accordingly.

23. Accordingly, while we hold that the University could decline affiliation after approval has been granted by the INC, INC is not debarred from laying down appropriate mechanism for taking a final decision on the objections to the affiliation where INC approval has been given in a time bound manner.

As held by the Hon'ble Supreme Court in **Dental Council of India v. Subharti KKB Charitable Trust, AIR 2001 SC 2151,** court's jurisdiction to interfere with the discretion of an expert body is limited, even though right to education is concomitant to the fundamental rights under Part III of the Constitution. Unless there are proper educational facilities, requirement of merit based education to compete in the global market cannot be met. Though, need for private institutions cannot be denied but such institutions could not be allowed to be run as shops and standards of education must be properly assessed. At the same time, the authorities have to exercise their regulatory powers in a fair and proper manner for the purpose for which such powers are conferred. Conferment of such power on regulatory bodies is coupled with duty to act fairly and expeditiously. The norms must be fulfilled but affiliation or other approval could not be refused or delayed by any extraneous consideration. Thus, though the views of the expert body like the University may not be interfered with lightly, a proper mechanism must be worked out by which

decision of the University can be cross-checked by another expert body as per mechanism to be laid down by the INC. No doubt, this Court, in exercise of power of judicial review, can interfere in an appropriate case but there are inherent limitations in exercise of power of this Court, against discretion exercised by an expert body, as laid down by the Hon'ble Supreme Court in **Subharti KKB Charitable Trust** (supra). The relevant observations of the Hon'ble Supreme Court may be quoted herein for ready reference:-

> "8. Hence, it is to be reiterated that law as it stands, Court's jurisdiction to interfere with the discretion exercised by such expert's body is limited even though right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. It is equally true that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of younger generation who have keen desire to acquire knowledge and education to compete in the global market. It is required to be accepted that for establishing educational institutions, government machinery or funds are neither sufficient nor adequate and the necessity of the private institutions cannot be denied. However, since ages our culture and civilization have recognised that education is one of the pious obligation of the Society to be discharged by the 'learned" and/or the State. It is for us to preserve that rich heritage of our culture of transcending the education

continuously unpolluted. In the recent past, a notion has developed that it is a religious and charitable object to establish and administer educational institution. This Court in Unni Krishnan v. State of A.P., [(1993) 1 SCC 645 at 751 (para 197) : 1993 AIR SCW 863 at p. 953 : AIR 1993 SC 2178 at p 2244) (para 164)] observed as under :-

> "Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty . It has been treated as a charitable activity. But never as trade or business."

9. At present , there is tremendous change in social values and environment. Some persons consider nothing wrong in commercialising education. Still however, private institutions cannot be permitted to have educational 'shops' in the country. Therefore, there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the concerned authority. On occasions, the concerned authorities, for various reasons, fail to discharge their function in accordance with the statutory provisions, rules and regulations. In some cases , because of the zeal to establish such educational institution by persons

having means to do so, approach the authorities, but because of red-tapism or for extraneous reasons, such permissions are not granted or are delayed. As against this, it has been pointed out that instead of charitable institutions, persons having means, considering the demands of the market rush for establishing technical educational institutions including medical college or dental college as a commercial venture with sole object of earning profits and/or for some other purpose. Such institutions fail to observe the norms prescribed under the Act or the Regulations and exploit the situation because of ever increasing demand for such institutions. In such cases, permission is refused by the authorities without there being any bias or extraneous considerations. It is, therefore, submitted that Courts normally should not interfere with a decision taken by the expert body such as Medical Council or Dental Council by straightway issuing mandamus directing the authority to grant approval or permission to establish such institution. Where the authority has refused approval, the institution may not be well equipped to impart education and may not have qualified teachers, staff or other infrastructure necessary for running the institution. If permission is straightway granted by the Court, society, education and utlimately, the students suffer.

10. Mr. Harish N. Salve, learned Solicitor General appearing for the appellant further contended that the MCI and DCI being the expert bodies having

powers to supervise the qualifications or eligibility standards for admission and invigilation to prevent substandard entrance qualification in these courses, judicial review of the decision of these expert bodies is not excluded, but the Courts would be slow to interfere in the decision of such expert bodies. For this, he placed reliance on the decision of this Court in Krishna Priya Ganguly v. University of Lucknow (1984) 1 SCC 307 : (AIR 1984 SC 186) wherein Court observed :

> "..... whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the Court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible."

11. He also referred to a three Judge Bench decision of this Court in State of Maharashtra v. Vikas Sahebrao Roundale (1992) 4 SCC 435 : (1992 AIR SCW 2182 : AIR 1992 SC 1926), wherein it was held that the students of unrecognised and unauthorised educational institutions could have not been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognised institutions. The Court observed "slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the

education."

12. Similarly in Guru Nanak Dev University v. Parminder Kr. Bansal (1993) 4 SCC 401 : (1993 AIR SCW 2695 : AIR 1993 SC 2412), another three Judges Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. It was held that "the Courts should not embarrass academic authorities by themselves taking over their functions." In A.P. Christians Medical Educational Society v. Govt. of A.P. (1986) 2 SCC 667 : (AIR 1986 SC 1490) this Court observed that the Court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law.

13. There cannot be an dispute that normally the Court should not interfere with the functioning of the educational institutions, particularly, expert bodies like the MCI or the DCI. Still however, the question is posed that if such bodies act arbitrary for some ulterior purpose, whether the Court has the power to set right such arbitrary exercise of power by such authorities. We find the answer to this question in the affirmative. We also agree with the learned Solicitor General that educational institutions should not be permitted to be commercialised for earning money, but at the same time, the Courts can do very little in this field as it is the function of the expert bodies, such as,

> Medical Council of India or the Dental Council of India. However, citizens would loose faith in such institutions if the allegations made in the appeal are repeatedly made with regard to the Inspection Reports and granting of approval by the Central Government. We leave this question for the Central Government to deal with appropriately as it is the function of the concerned authorities to plug the loopholes and see that in such matters nothing hanky panky happens."

Learned counsel for the INC stated that the INC will consider the question whether it could act as a nodal agency and co-ordinate conflicting stands of the University or other authorities after INC is satisfied that an institute is having the necessary infrastructure. The University has declined to grant affiliation though the INC has given the approval. The University has given reasons for grant of affiliation vide Annexure P.5 dated 8.11.2006, Annexure P.6 dated 7.8.2007 and Annexure P.9 dated 8.11.2007. We do not find any ground to hold that the deficiencies pointed out do not exist. It will be open to the petitioner to apply afresh or to move the INC and the INC may consider the matter if any appropriate mechanism is evolved for such a purpose. If the University is not satisfied with the removal of deficiencies by the petitioner or INC is unable to redress the grievance of the petitioner, the petitioner will be at liberty to take its remedies in

accordance with law.

Question (ii) is answered accordingly.

Re;(iii)

24. In view of answer to Question (i), we hold that the State Government or the State Council could not allow admissions to be made for B.Sc Nursing in absence of approval of the INC or affiliation by the University.

Re:(iv)

25. In view of answer to Question (ii), we decide this question against the petitioner.

Re:(v)

26. In view of answer to Questions (i) and (iii), this question has to be answered against respondent Nos. 5 to 8.

We now sum up our conclusions as under:-

(i)The Central Act having laid down procedure for making admissions as per regulations framed under section 16, the said procedure was binding on all concerned for admissions to B.Sc Nursing. In other words, an institution was required to obtain No Objection/Essentiality Certificate from the State Government, get an inspection done from the INC for permission to start the programme, get approval from the State Nursing

Council and the Examination Board/University, before admissions were made. The view taken by a Single Bench of this Court in **Mata Amrit Kaur Welfare Trust** (supra) will stand overruled.

(ii)There is no prohibition in the regulations framed by the INC to a University declining affiliation even after INC has given permission for starting a programme. In fact, the regulation itself lays down that even after permission of the INC, the institution has to get approval of the University before making admissions. The view taken by a Single Bench of this Court in Dr. **Shyam Lal Thapar Nursing Foundation** (supra) will stand modified accordingly.

(iii)The INC was competent to lay down a procedure to cross check refusal of affiliation by a University and in fact it is desirable for the INC to lay down such a procedure to check arbitrariness and to avoid delay.

(iv)The petitioner was not entitled to a direction for grant of affiliation but could apply for fresh inspection to the University or to the INC and

thereafter to take its legal remedies. The INC will take decision in accordance with law, within two months from the date of receipt of a copy of this order.

(v)Added respondents were not entitled to make admissions as the State Government or the State Nursing Council was not entitled to give such a permission without prior approval of the INC and affiliation by the University. The said respondents are restrained from making admissions without approval from the INC and affiliation by the University.

26. The writ petition will stand disposed of accordingly.

(Adarsh Kumar Goel)
Judge

(Kanwaljit Singh Ahluwalia)
Judge

December 19, 2007
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